

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

THE UNITED STATES OF AMERICA,

-versus-

DOCKET NO: 17-CR-6074

CARL L. BURDICK,

Defendant.

TRANSCRIPT OF PLEA HEARING
BEFORE THE HONORABLE CHARLES J. SIRAGUSA
UNITED STATES DISTRICT JUDGE
TUESDAY, MAY 16, 2017

A p p e a r a n c e s:

On Behalf of the Government:

Kyle Rossi, Assistant US Attorney

On Behalf of the Defendant:

Robert Smith, Esq.

Defendant present

R e p o r t e d B y:

Briana L. Jeffords

1 (Whereupon, the proceeding commenced at 12:02 p.m.)

2 THE COURT: For the record, this is the matter of
3 the *United States versus Carl Burdick*. Come on up,
4 Mr. Burdick. Good afternoon.

12:13:14PM 5 THE DEFENDANT: Good afternoon.

6 THE COURT: For the record, you are Carl Burdick?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Burdick, you are appearing with
9 your attorney Mr. Smith; is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The Court notes the presence of
12 Mr. Rossi on behalf of the Government. Mr. Burdick, I have
13 been provided a copy of the written plea agreement. It is my
14 understanding that pursuant to the terms and conditions
12:13:31PM 15 contained in this agreement, it would be your intent to waive
16 indictment and plead guilty to a one-count information
17 charging you with transportation of a minor in commerce with
18 intent to engage in criminal sexual activity; is that correct?

19 THE DEFENDANT: That is correct.

12:13:49PM 20 THE COURT: Here is what we are going to do then,
21 Mr. Burdick, I'm going to ask you some questions. The purpose
22 of the questions is to make sure the record, that is what our
23 court reporter is taking down, is clear that you know what you
24 are doing and this is what you want. Do you understand that?

12:14:01PM 25 THE DEFENDANT: Yes, sir.

1 THE COURT: Therefore, Mr. Burdick, at any time I'm
2 asking you questions you have any for me, I want you to feel
3 free to stop me, ask me your question, and I will do my best
4 to answer it. Okay?

12:14:13PM 5 THE DEFENDANT: Okay.

6 THE COURT: The first thing I want you to do is
7 raise your right hand.

8 C-A-R-L B-U-R-D-I-C-K,
9 called herein as a witness, was examined
12:14:18PM 10 under oath and testified as follows:

11 THE COURT: Put your hand down. What you have
12 done, Mr. Burdick, as I'm sure you are aware of, is taken an
13 oath to tell me the truth. I assume you are going to tell me
14 the truth. But if you lie to me, that is if you lie in
12:14:31PM 15 response to any question I ask, that would be another crime
16 called perjury which you can be prosecuted and imprisoned. Do
17 you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Burdick, can you tell me how old
12:14:40PM 20 you are now?

21 THE DEFENDANT: Fifty-eight.

22 THE COURT: Fifty-eight years old. How far have
23 you gone in school?

24 THE DEFENDANT: GED and a little bit of college.

12:14:47PM 25 THE COURT: So obviously then you can read, write,

1 and understand English; is that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Burdick, are you currently under
4 the care of a medical doctor for any kind of physical issues?

12:14:57PM 5 THE DEFENDANT: No, sir.

6 THE COURT: Have you ever been treated, or
7 hospitalized, or confined for any type of emotional or mental
8 disorders?

9 THE DEFENDANT: No, sir.

12:15:05PM 10 THE COURT: Are you addicted to alcohol?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you addicted to drugs?

13 THE DEFENDANT: No, sir.

14 THE COURT: How long have you been in Jefferson

12:15:11PM 15 County Jail?

16 THE DEFENDANT: About four months now.

17 THE COURT: During that time, have you had any
18 alcohol or drugs?

19 THE DEFENDANT: No, sir.

12:15:17PM 20 THE COURT: Regarding your decision to plead guilty

21 under the terms and conditions of this plea agreement, Mr.

22 Burdick, have you discussed with Mr. Smith the Government's

23 case against you? By that, I mean the proof that the

24 Government has that you did commit this crime. Have you done

12:15:31PM 25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you also discussed with Mr. Smith
3 what the result might be if you went to trial? In other
4 words, whether you would be found guilty or not guilty?

12:15:40PM 5 THE DEFENDANT: Yes, sir.

6 THE COURT: Based on your conversations with Mr.
7 Smith and given, of course, the facts and circumstances, do
8 you believe entering into this pleading agreement and pleading
9 to this charge is what's best for you to do?

12:15:53PM 10 THE DEFENDANT: Yes, sir.

11 THE COURT: With respect to the written plea
12 agreement, itself, Mr. Burdick, have you gone over with
13 Mr. Smith all of the terms and conditions?

14 THE DEFENDANT: Yes, sir.

12:15:58PM 15 THE COURT: Did you read the agreement yourself?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: To the extent you had questions about
18 the plea agreement, Mr. Burdick, did Mr. Smith answer those
19 questions for you?

12:16:09PM 20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you now had sufficient time to
22 confer with him prior to coming to court and pleading guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Burdick, are you satisfied with
12:16:15PM 25 Mr. Smith's advise and representation, and by that I mean the

1 job he has done for you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: What I am going to do now then, Mr.
4 Burdick, is go over portions of the plea agreement with you.

12:16:26PM 5 Okay? I'm not going to go over everything because you just
6 told me you went over everything with Mr. Smith and you read
7 the agreement yourself; is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: However, as I indicated, if you have
12:16:37PM 10 questions about anything and that includes any part or portion
11 of the plea agreement whether I bring it up or not, stop me,
12 ask your question, and I will do my best to answer it. Okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, crimes, as you may be aware, are
12:16:54PM 15 divided into two categories: Misdemeanors and felonies.

16 Felonies, Mr. Burdick, are the more serious crimes because
17 once convicted of a felony, you could receive more than one
18 year in federal prison. Do you understand that?

19 THE DEFENDANT: Yes, sir.

12:17:06PM 20 THE COURT: And do you understand the crime to
21 which you will be pleading guilty, transportation of a minor
22 in commerce with attempt to engage in criminal sexual
23 activity, is in fact a felony. Do you understand that?

24 THE DEFENDANT: Yes, sir.

12:17:20PM 25 THE COURT: Mr. Burdick, if you will take a look at

1 paragraph one, you will see once you are convicted of this
2 charge, whether it's by pleading guilty or after trial, you
3 must receive a mandatory minimum term of imprisonment of 10
4 years.

12:17:29PM 5 THE DEFENDANT: Yes, sir.

6 THE COURT: You could receive a maximum of up to
7 life. You are looking at a fine of up to \$250,000. You must
8 pay a mandatory \$100 special assessment which everyone
9 convicted of a felony must pay. And you are looking at a term
10 of supervised release of not less than five years but
11 potentially up to life. Do you see that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand those are the maximum
14 penalties you face upon pleading guilty?

12:17:59PM 15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, if you will turn over to page two
17 please. Now, I want to direct your attention to paragraph
18 two. Now, presumably, you are indigent because you are being
19 represented by the federal public defender. But if at some
12:18:19PM 20 point it is determined you are not indigent, you have
21 sufficient funds, then in addition -- correct me if I am wrong
22 Mr. Smith -- in addition to the fine of \$100 special
23 assessment, you have to pay on top of that another \$5,000; is
24 that correct?

25 MR. SMITH: That's correct.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now again if you are indigent, you
4 don't have to pay that. But I want you to understand that if
12:18:40PM 5 at some point I find that you are not indigent, then you would
6 be required to pay in addition to the \$100 special assessment,
7 an enhanced special assessment of \$5,000. Do you understand
8 that?

9 THE DEFENDANT: Yes, sir.

12:18:52PM 10 THE COURT: Now if you would take a look at
11 paragraph three, here is what that means. It talks about
12 restitution. If the 15-year-old victim in this case is able
13 to establish for my benefit probable cause to believe as a
14 result of your conduct she sustained injuries, then I would be
12:19:14PM 15 required to order restitution to her. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if I determine restitution and if I
18 determine an amount and you say well I don't like that, you
19 can't -- that's not a basis to withdraw your plea of guilty.

12:19:32PM 20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So once you plead guilty today, that's
23 it. Do you understand?

24 THE DEFENDANT: Yes, sir.

12:19:37PM 25 THE COURT: Now go down to paragraph four. Have

1 you discussed with Mr. Smith what supervised release is?

2 THE DEFENDANT: I think so.

3 THE COURT: Let me over it with you. It's kind of
4 probation or parole. It means this: That after any prison
12:19:47PM 5 sentence you serve, I will place you on supervised release for
6 a number of years. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: While on supervised release, Mr.
9 Burdick, I want you to understand that you have to report to a
12:19:59PM 10 federal probation officer and abide by the conditions that I
11 set and that the probation office of my approval sets. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And lastly, I want you to understand
12:20:11PM 15 something. If you are on supervised release and it's ever
16 proven to me by a preponderance of evidence that you violated
17 any of those terms and conditions, I can put you back in
18 prison. Do you understand that?

19 THE DEFENDANT: Yes, sir.

12:20:21PM 20 THE COURT: If the violation stems from what I will
21 call a technical violation or a violation pertaining to
22 certain conduct, for example, if I ordered drug testing and
23 you didn't do that, if you committed a DWI, if you didn't
24 notify probation when you changed addresses, then I can put
12:20:43PM 25 you back in prison for up to five years without giving you any

1 credit for the time already done on supervised release. Do
2 you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: However, if the violation stemmed from
12:20:55PM 5 what I will refer to as a new child exploitation crime, that
6 you did something that amounts to child exploitation under
7 articles as set forth in 109(a) 110, or 117 or Sections 1201
8 or 1591 of Title 18, if you committed another child
9 exploitation -- I will give you an example. You were found
12:21:23PM 10 guilty or I found you by a preponderance of evidence you
11 possessed child pornography, or if I found by a preponderance
12 of evidence you committed similar conduct to what brings you
13 here today, then I would have to put you back in prison for at
14 least five years and could put you back for the rest of your
12:21:41PM 15 life. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Take a look at paragraph five because
18 it talks about the Sex Offender Registration Notification Act.
19 What it requires -- it is a federal law that requires you to
12:21:55PM 20 keep -- once you get out to register and keep your
21 registration current in all of the following jurisdictions:
22 Where you reside, are employed, or if you were to go back to
23 school as a student. It indicates that you understand there
24 are requirements for registration to provide your name,
12:22:13PM 25 residence, address, names and addresses of any places where

1 you are or will be employed, are a student. And you further
2 understand as indicated that the requirement is to keep
3 current the registration and that includes informing at least
4 one jurisdiction in which you reside, are employed, or are a
12:22:36PM 5 student, not less than three business days after any change in
6 your name, residence, employment, or student stature. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, we live in New York. You will be
12:22:51PM 10 classified. In order to keep your sex offender in New York,
11 there are registration requirements you are going to have to
12 comply with in New York. If you don't comply, then you can be
13 prosecuted for a federal crime. That's what this is all
14 about. Do you understand that?

12:22:59PM 15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now lastly, take a look at paragraph
17 six over on page three. I want to explain to you what this
18 means. Once you do your sentence, your prison sentence, if
19 the Attorney General's Office believes you are what is
12:23:25PM 20 referred to as a sexually dangerous person pursuant to 18 USC
21 Section 4248, then the Attorney General or the Director of
22 Bureau of Prisons for that matter can seek an order from a
23 judge civilly committing you even though you did your criminal
24 sentence. Do you understand that?

12:23:58PM 25 THE DEFENDANT: Yes.

1 THE COURT: So it means you do your time. An
2 application is made to find you a sexually dangerous person.
3 And the judge to whom the application is made finds that, then
4 you could be placed in civil confinement. In other words, you
12:24:13PM 5 would be -- I hesitate to use the word incarcerated, but
6 that's what it is. You will be hospitalized let's say civilly
7 and not be able to get out. Do you understand that?

8 THE DEFENDANT: Yes. Can I ask you a question?

9 THE COURT: Of course.

12:24:24PM 10 THE DEFENDANT: Is that based on your past, or what
11 is all that based on?

12 THE COURT: You know what, I'm not sure. But here
13 is what I think. It could be based on how you do in prison.
14 It could be based on the crime for which you are convicted.
12:24:39PM 15 It could be based on your past as well. I'm not saying you
16 do, but if you had five prior incidents of sexually acting out
17 -- so there are a number of factors on which it can be based,
18 but that would be a determination to be made once you complete
19 your prison term. Do you understand that?

12:24:56PM 20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did I answer your question?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Thank you. Now if you will turn over
24 please to page four and go down to paragraph nine. Do you see
12:25:02PM 25 where it says at the end of paragraph nine Sentencing Reform

1 Act of 1984?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: It is probably pretty obvious, but this
4 is in reference to federal law involvement in sentencing. Do
12:25:12PM 5 you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The reference, take a look at paragraph
8 nine. That talks about a sentence. Do you see that? Do you
9 see paragraph nine?

12:25:28PM 10 THE DEFENDANT: Okay. Yes, your Honor.

11 THE COURT: It says Sentencing Reform Act of 1984.
12 I just want you to know that's a reference to federal law
13 involved in this action. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand that under
16 federal law when I sentence you, I have to consider a number
17 of factors. One of the factors I have to consider is called
18 the Advisory Sentencing Guidelines. Do you understand that?

19 THE DEFENDANT: Yes, sir.

12:25:46PM 20 THE COURT: Have you discussed these guidelines
21 with Mr. Smith?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand then, Mr. Burdick,
24 that under these guidelines as the judge I must determine two
12:25:56PM 25 numbers. One is called your offense level. The other is

1 called your criminal history category. Then once I determine
2 these two numbers, I go to a book and the numbers recommend to
3 me a range within the guidelines in which you should be
4 sentenced. Do you understand these?

12:26:08PM 5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you also understand that it is my
7 obligation as the judge for sentencing that before I sentence
8 you to review a document which you will be interviewed called
9 a Presentence Investigation Report. Do you understand that?

12:26:19PM 10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand this document, among
12 other things, will tell me a little bit about the crime to
13 which you plead guilty, the facts and circumstances?

14 THE DEFENDANT: Yes.

12:26:29PM 15 THE COURT: Will make recommendations to me as to

16 what the probation office believes your correct numbers are
17 under these Advisory Sentencing Guidelines. You know what,
18 very importantly will tell me a little bit about who Carl
19 Burdick is. For example, you mentioned your education that

12:26:42PM 20 you got your GED and then did some college. It will tell me

21 about that. I know from looking at the complaint that you
22 drove a truck. It will tell me about your employment history.
23 It will indicate to me whether you have ever been married or
24 whether you have any children. It will give me some insight

12:26:57PM 25 into your finances. It will detail for me your criminal

1 record, if any. It will tell me a little bit about whether
2 you have any health related issues among other things. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

12:27:09PM 5 THE COURT: Do you understand that it is my
6 responsibility as the sentencing judge to carefully review the
7 presentence report and then sentence you to what I believe is
8 just, fair, appropriate, and reasonable under the law. Do you
9 understand that?

12:27:20PM 10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now if you take a look -- if you'll
12 stay on page -- actually, go over to page five and go to
13 paragraph 10 because there Mr. Rossi on the Government's
14 behalf and Mr. Smith on your behalf have done what they
12:27:29PM 15 believe are the correct calculations under the advisory
16 guidelines. You will see in paragraph 10 -- excuse me -- in
17 paragraph 10 that you and the Government agree that your base
18 offense level is 28. Do you see that?

19 THE DEFENDANT: Yes, sir.

12:27:42PM 20 THE COURT: However in paragraph 11, you and the
21 Government agreed that there should be certain increases to
22 that base offense level. Subparagraph A, a two-level increase
23 because the minor was in your custody, care, or supervisory
24 control. Another two-level increase in subparagraph B because
12:28:00PM 25 the offense involved undue influence of the minor. Another

1 two-level increase as set forth in subparagraph B because, to
2 commit the events involved, you used a computer. And finally,
3 another two-level increase in subparagraph B because the
4 offense involved the actual commission of a sex act. Do you
12:28:20PM 5 see those?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now if you take that base offense level
8 of 28 and add the increases which total eight, it becomes the
9 adjusted offense level of 36 as indicated in paragraph 12. Do
12:28:36PM 10 you see that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: However, Mr. Burdick, in paragraph 13,
13 the Government is agreeing not to impose a recommendation that
14 that 36 be reduced by a total of three for what's called
12:28:45PM 15 acceptance and responsibility. Do you see that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: However, I need to explain something to
18 you. You don't get this reduction just by pleading guilty.
19 You have to convince me when I sentence you that you are
12:28:55PM 20 remorseful, sorry. I will give you some examples. Remember I
21 said you would be interviewed by probation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you told the probation officer that
24 you really didn't do anything wrong, it was set up, it's all
12:29:07PM 25 made up, the victim is lying, would that be accepting

1 responsibility?

2 THE DEFENDANT: No, your Honor. It wouldn't.

3 THE COURT: Of course not. And Mr. Burdick, if you
4 committed new criminal conduct, it would not be consistent

12:29:17PM 5 with accepting responsibility. And you might say, well, I am
6 in jail, how am I committing criminal conduct. Well, it
7 happens all the time. You may have seen that people get drugs
8 smuggled into them. They get in beef with another inmate and
9 punch them out. They start harassing the guards. To engage
12:29:36PM 10 in new criminal conduct would not be consistent with accepting
11 responsibility. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Does that make sense to you?

14 THE DEFENDANT: Yes.

12:29:43PM 15 THE COURT: If you do, in fact, get that reduction
16 for acceptance, as I indicated, your offense level will be 33.
17 Paragraph 14, you and the Government understand that your
18 criminal history category is one. That's the lowest you can
19 have. The lowest criminal history category is one. The
12:29:57PM 20 highest is six. So one is the lowest. And in paragraph 15,
21 Mr. Rossi and Mr. Smith have calculated that with an offense
22 level of 33, if you get the reduction for acceptance and a
23 criminal history category of one, the recommended range under
24 the Advisory Sentencing Guidelines is 135 to 168 months.
12:30:21PM 25 135 months is 11 years and 3 months. 168 months is 14 years.

1 The recommended fine range is \$35,000 to a quarter of a
2 million. The recommended period of supervised release is five
3 years up to life. And of course, you have to pay if you are
4 indigent, \$100 special assessment. If it turns out you are
12:30:38PM 5 not, \$100 plus an enhanced \$5,000 assessment. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, I want you to listen carefully to
9 the last sentence in paragraph 15. It says "notwithstanding
12:30:59PM 10 this, the defendant understands that with the sentencing, the
11 defendant is subject to the mandatory minimum and maximum
12 penalty as set forth in going forward with this agreement."
13 Here is what that means. It means that when I sentence you, I
14 could give you life in prison. And if I did, you couldn't
12:31:16PM 15 take your plea back. Do you understand that?

16 THE DEFENDANT: I know I can't take it back.

17 THE COURT: You can't take it back. In other
18 words, here is what I mean. You can't go out of here after we
19 take this plea, have second thoughts, and then try to withdraw
12:31:30PM 20 your plea. If you don't like the sentence I give you, you
21 can't withdraw your plea. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So I will put it to you as directly as
24 I can. Once you plead guilty today, you can't try to take
12:31:41PM 25 your plea back. Do you understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Okay. Now, I want to direct your
3 attention to paragraph 16. That says that you and the
4 Government agree to the guideline calculations that we just
12:31:59PM 5 went through. And beyond that, that you are not going to
6 advocate, or ask for, or recommend a sentence outside of the
7 guidelines. It says except as provided for in this agreement,
8 but there really is no exception. So you are agreeing not to
9 ask for anything other than what the guideline sentence is and
10 so is the Government. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: In other words, so here is what they
13 have. Undoubtedly, Mr. Smith is going to come into sentencing
14 and say that you should receive 135 months. That's the lowest
12:32:20PM 15 he can argue for. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Rossi is probably going to come in
18 and argue for the high end of that, 168 months. Do you
19 understand that?

12:32:31PM 20 THE DEFENDANT: Yes.

21 THE COURT: It will be up to me then to decide
22 whether you should get a guideline sentence, or whether I
23 should give you more, whether I should give you less. I can't
24 give you any less than 10 years because that's the mandatory
12:32:38PM 25 minimum, but that would be up to me. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: But you've got to keep in mind that if
3 you plea, you can get up to life in prison. Do you understand
4 that? Do you understand that?

12:33:04PM 5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Now, I want to direct your
7 attention next if I could to page nine. Do you see where it
8 says at the top appeal rights, Mr. Burdick? Take your time.

9 THE DEFENDANT: Yes, sir.

12:33:17PM 10 THE COURT: As you may or maybe you're not aware,
11 if you were convicted of this crime after trial, you could
12 appeal your conviction to a higher court. The court above me
13 is called the Second Circuit Court of Appeal. You can claim
14 that I did something wrong, Mr. Rossi did something wrong,
12:33:33PM 15 that Mr. Smith did something wrong, or that the jury reached
16 the wrong result. However, under this portion of the
17 agreement, you are consenting, that is agreeing, to give up
18 your right to appeal or collaterally attack. Do you have any
19 idea what collaterally attack means?

12:33:53PM 20 THE DEFENDANT: No, I don't.

21 THE COURT: Nobody usually does so I will explain
22 it. If you try to upset your sentence by going to the court
23 above me which is called the Second Circuit Court of Appeal,
24 that's called an appeal. If you come back to me or another
12:34:02PM 25 judge like me, that is called a collateral attack. One is

1 going up. One is coming back. Makes sense now?

2 THE DEFENDANT: Yep.

3 THE COURT: You're agreeing to give up your right
4 to appeal or collaterally attack any sentence that includes a
12:34:15PM 5 term of incarceration of 165 months or less, a fine of a
6 quarter million dollars or less, a period of supervised
7 release of life or less, and \$100 special assessment if you
8 are indigent, or if you are not indigent, an enhanced
9 additional \$5,000 special assessment. Do you understand that?

12:34:37PM 10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, if you turn over to page 10. Do
12 you see what it says at the top of page 10?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What does it say?

12:34:46PM 15 THE DEFENDANT: Forfeiture of probation.

16 THE COURT: What does forfeiture mean?

17 THE DEFENDANT: To give up.

18 THE COURT: Exactly. Under this portion of the
19 agreement, you are agreeing that to the extent you have any
12:34:55PM 20 interest in this Samsung Galaxy Core Prime cellular telephone
21 as specified in paragraph 25(a) you are giving up your right.
22 You are essentially saying to the Government do with what you
23 want to the phone. Do you understand that?

24 THE DEFENDANT: Yes, sir.

12:35:13PM 25 THE COURT: Now, go back to page one. Paragraph

1 one, if you would please, Mr. Burdick, do you see how it
2 starts off it says "the defendant agrees to waive indictment."
3 Do you see that?

4 THE DEFENDANT: Yes, sir.

12:35:29PM 5 THE COURT: I need to discuss with you here in
6 court, Mr. Burdick, what it means to waive the indictment.
7 Okay? Is that all right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now you already talked to Mr. Smith
10 about this; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, I am going to ask you some
13 questions again because I want to make sure the record is
14 clear. Do you understand?

12:35:41PM 15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Burdick, do you understand under
17 our law because this is a felony, a serious charge, you have
18 the absolute right to be prosecuted on it by what's called an
19 indictment returned by a grand jury. Do you understand that?

12:35:50PM 20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that a grand jury
22 consists of 23 people from the community? Here in federal
23 court in the Western District, the community consists of
24 Monroe County and several of the outlining counties. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And Mr. Burdick, do you understand that
3 before a grand jury can charge you with this crime, at least
4 12 of those 23 people must find reasonable cause that you
12:36:16PM 5 committed the crime. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand, Mr. Burdick, if the
8 matter were to be presented to the grand jury, it would be up
9 to the grand jury whether they charge you with the crime or
12:36:21PM 10 whether they dismiss the charge against you. Do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: However, Mr. Burdick, do you understand
14 that you can give up -- it's called waive your right to go to
12:36:29PM 15 the grand jury and consent, that is agree to be prosecuted by
16 what is called a felony information filed with the United
17 States attorney. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you understand, Mr. Burdick,
12:36:39PM 20 that if you do agree to that, that information, once it is
21 filed, is just like an indictment returned by a grand jury?
22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand, Mr. Burdick,
12:36:49PM 25 under this plea agreement, that is exactly what you are being

1 required to do, waive indictment? Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Burdick, would it be correct to say
4 that you do want to waive indictment because you want to get
12:36:59PM 5 the benefits of the plea agreement? Would that be correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Burdick have you discussed fully
8 with Mr. Smith your right to indictment by a grand jury?

9 THE DEFENDANT: Yes.

12:37:10PM 10 THE COURT: Have you talked to him about that,
11 Mr. Smith?

12 MR. SMITH: Yes.

13 THE COURT: Do you have any questions for me about
14 the right you would be giving up?

12:37:18PM 15 THE DEFENDANT: No, sir.

16 THE COURT: If this then is what you want to do,
17 Mr. Burdick, in a moment, I'm going to ask you to sign the
18 waiver form in front of you. Before you do so, however, I
19 want you to understand that if and when you sign it, what you
12:37:31PM 20 are doing is telling me in writing that you do understand your
21 right to indictment by a grand jury and are freely giving up
22 that right. If this is the truth and this is what you want to
23 do, I would ask you to sign the form then.

24 For the record, the Court is observing Mr. Burdick
12:37:52PM 25 sign the waiver form. The Court is satisfied based on answers

1 he has given to questions put to him by the Court, based on
2 his demeanor in answering the questions, and based on the
3 signing of the waiver form which Mr. Smith has signed to
4 witness his client's signature, that the waiver of indictment
12:38:06PM 5 is being entered knowingly, intelligently, and voluntarily.

6 Accordingly, the Court is signing proving the
7 waiver of indictment and dating it today's date which is May
8 16, signing it, proving the waiver of indictment, and handing
9 it back to Ms. Allen for filing.

12:38:23PM 10 Mr. Burdick, you are now accused by way of felony
11 information followed by the acting United States Attorney
12 James Kennedy, signed by Mr. Rossi on his behalf of one count
13 of violation entitled 18 of the United States Code Section
14 2423(a) transportation of a minor in commerce with intent to
12:38:50PM 15 engage in criminal sexual activity.

16 Mr. Smith, have you been provided a copy of the
17 information.

18 MR. SMITH: Yes, I have.

19 THE COURT: Do you waive a full reading?

12:38:56PM 20 MR. SMITH: Yes, I do.

21 THE COURT: Mr. Burdick, at this point I am going
22 to enter a not guilty plea on your behalf because before I ask
23 you if you do want to plead guilty, there are other things I
24 have to go over with you first. Do you understand that?

12:39:02PM 25 THE DEFENDANT: Yes, sir.

1 THE COURT: What I would like you to do now then is
2 return to the plea agreement and go over now to page 12,
3 paragraph 32, and follow along as I read it. It says, "this
4 plea agreement represents the total agreement between the
12:39:16PM 5 defendant, Carl L. Burdick, and the Government. There are no
6 promises made by anyone other than those contained in this
7 agreement. This agreement supercedes -- supercedes means
8 takes the place of -- any other prior agreements, written or
9 oral, entered into between the Government and the defendant.
12:39:33PM 10 It goes on to say I have read this agreement which consists of
11 13 pages. I have had a full opportunity to discuss this
12 agreement with my attorney, Robert Smith, Esq. I agree that
13 it represents the total agreement reached between myself and
14 the Government. No promises or representations have been made
12:39:45PM 15 to me other than what is contained in this agreement. I
16 understand all the consequences of my plea of guilty. I fully
17 agree with the contents of this agreement. I have signed this
18 agreement voluntarily of my own free will. Mr. Burdick, is
19 that all true?

12:39:59PM 20 THE DEFENDANT: Yes, sir.

21 THE COURT: If that is true, in a moment I am going
22 to ask you to sign the plea agreement. However, before doing
23 so, as to the plea agreement, I want you to understand if and
24 when you sign it, what you are doing in effect is telling me
12:40:10PM 25 in writing that you do indeed understand all of the terms and

1 conditions and that you are in fact entering into it freely.
2 Mr. Burdick, if that's the truth and this is what you want to
3 do, I would ask you to please sign the agreement at this time.

4 For the record, the Court is observing Mr. Burdick
12:40:26PM 5 sign the plea agreement. The Court is satisfied based on the
6 answers he has given to the questions posed by the Court,
7 based on his demeanor in answering the questions, and based on
8 the signing of the plea agreement that the plea agreement and
9 the plea are being entered into knowingly, intelligently, and
12:40:36PM 10 voluntarily. The Court is, again, observing Mr. Smith sign at
11 this time to witness his client's signature on the plea
12 agreement.

13 Mr. Burdick, the next thing I need to do is go over
14 with you your rights that you give up when you plead guilty
12:40:51PM 15 instead of going to trial. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you have any questions, what are you
18 going to do?

19 THE DEFENDANT: Stop you and ask you.

12:40:58PM 20 THE COURT: Absolutely. Mr. Burdick, do you
21 understand that under our law you have the absolute right to
22 continue to plead not guilty and go to trial on these charges
23 if you wanted to? Do you understand that?

24 THE DEFENDANT: Yes, sir.

12:41:04PM 25 THE COURT: And do you understand that if you did

1 want to go to trial, you would be entitled to a trial by jury.
2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Moreover, Mr. Burdick, do you
12:41:12PM 5 understand that if you did want to go to trial, you would be
6 entitled to continued representation by Mr. Smith free of
7 charge at the trial, and in fact, at all stages of the
8 proceedings. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Furthermore, do you understand that if
11 you did want to go to trial, it would be up to Mr. Rossi upon
12 behalf of the Government to call witnesses and produce
13 evidence against you. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Further, do you understand that if you
16 did want to go to trial, Mr. Smith on your behalf would have
17 the right to challenge any evidence that Mr. Rossi tried to
18 introduce against you and you would have the right to cross
19 examine and confront any witnesses that Mr. Rossi called to
12:41:29PM 20 testify against you? Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In addition, Mr. Burdick, do you
23 understand that if you did want to go to trial, you would have
24 the right to testify in our own defense or the right not to
12:41:47PM 25 testify? Also, if you wanted as part of defendant's case to
12:41:57PM

1 call witnesses and even compel them to testify by subpoena or
2 put on other evidence by the way of the defendant's case or
3 choose not to do that, and if in fact, Mr. Burdick, you chose
4 not to testify or if indeed you chose not to put on any
12:42:19PM 5 evidence as the defense case, I would specifically explain to
6 the jury that they could in no way consider such factors as
7 any evidence of your guilt or for that matter evidence of
8 benefit. Do you understand?

9 THE DEFENDANT: Yes, sir.

12:42:30PM 10 THE COURT: Next, do you understand that before a
11 jury can find you guilty of this charge, the Government must
12 prove to their satisfaction each of the essential elements in
13 the crime as set forth in the plea agreement in paragraph
14 seven on pages three and four? That is, the Government must
12:42:44PM 15 prove before a jury can convict you beyond a reasonable doubt
16 that you knowingly transported a minor in interstate commerce
17 from the state of New York to the state of Montana. Secondly,
18 the Government must prove beyond a reasonable doubt that you
19 did so with the intent with the minor to engage in criminal
12:43:02PM 20 sexual activity for which any person can be charged with a
21 criminal offense. And third, they would have to prove beyond
22 a reasonable doubt that the minor was under the age of
23 18 years at the time. Do you understand that?

24 THE DEFENDANT: Yes, sir.

12:43:15PM 25 THE COURT: In other words, Mr. Burdick, I would

1 explain to the jury that if the Government failed to prove any
2 one or more of those elements beyond a reasonable doubt, they
3 must acquit you. Do you understand?

4 THE DEFENDANT: Yes, sir.

12:43:22PM 5 THE COURT: Do you also understand, Mr. Burdick,
6 that before a jury can find you guilty of these charges, they
7 must being unanimous in their verdict? That means all 12
8 people -- 12 people normally sit on a criminal case in federal
9 court or under some limited circumstances 11. Each juror for
12:43:38PM 10 himself or herself must find that the Government has proved
11 the requisite elements of this crime beyond a reasonable doubt
12 before the jury can then return a verdict of guilty. Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

12:43:46PM 15 THE COURT: Mr. Burdick, do you understand that by
16 pleading guilty you are giving up all of these rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that a plea of guilty
19 is the same as if a jury found you guilty after trial?

12:43:56PM 20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, I need to point out to you,
22 Mr. Burdick, do you have a prior felony conviction?

23 THE DEFENDANT: One from 1984, your Honor.

24 THE COURT: Well, if you have a prior felony and
12:44:08PM 25 this is your second felony, under New York Law you are going

1 to permanently lose certain civil rights. For example, you
2 will permanently lose your right to hold certain licenses and
3 offices. And while you are under court supervision, you lose
4 your right to vote. Do you understand that?

12:44:18PM 5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, please listen carefully to this
7 next question, Mr. Burdick. Other than the promises contained
8 in the written plea agreement, have any other promises been
9 made to get you to plead guilty? You have to answer.

12:44:29PM 10 THE DEFENDANT: No, your Honor.

11 THE COURT: Has anyone forced you to plead guilty?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Has anyone threatened you in any way to
14 get you to plead guilty?

12:44:36PM 15 THE DEFENDANT: No, your Honor.

16 THE COURT: Again, Mr. Burdick, based on your
17 conversations with Mr. Smith and given the facts and
18 circumstances, you believe this is what's best for you to do?

19 THE DEFENDANT: Yes, your Honor.

12:44:46PM 20 THE COURT: Mr. Burdick, have you answered my
21 questions truthfully?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions for me
24 because now would be your final opportunity?

12:44:55PM 25 THE DEFENDANT: No, sir.

1 THE COURT: Now, before I can accept your plea of
2 guilty, you have to tell me what you did. In that regard, I'm
3 going to direct your attention to page four, paragraph eight
4 where it is stated that you and the Government agree to the
12:45:06PM 5 following facts: Subparagraph A that between July 1st, 2015,
6 and July 31st, 2015, here in the Western District which would
7 include Wayne County, Monroe County, that you -- and you were
8 born in 1958 -- transported a 15-year-old minor who lived in
9 Wayne County from Wayne County to the state of Montana; is
12:45:34PM 10 that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And did you do that with the intent to
13 engage in criminal sexual activity?

14 THE DEFENDANT: Yes, your Honor.

12:45:41PM 15 THE COURT: And that was specifically sexual
16 conduct with her; is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, is it true, Mr. Burdick, that
19 before transporting her to Montana, you had taken her up to
12:45:58PM 20 Watertown; is that correct?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And you engaged in sexual intercourse
23 with her in your cab?

24 THE DEFENDANT: No, sir, in a motel.

12:46:06PM 25 THE COURT: In a motel. And did you also engage in

1 an oral sexual contact with her, just sexual intercourse?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. In subparagraph B, is it correct
4 that you were, back in the spring of 2015, that you were a
12:46:23PM 5 tractor trailer driver and you developed a relationship with
6 her via your cell phone over the internet; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How did that happen?

9 THE DEFENDANT: She texted me by accident, your
12:46:37PM 10 Honor. She thought she was texting a friend of hers. And
11 when she texted me, I texted her back. I said, "You have the
12 wrong person." And she said, "No, I don't." And the
13 conversation went on from there, your Honor.

14 THE COURT: So and initially, you didn't tell her
12:46:55PM 15 your age; right?

16 THE DEFENDANT: No, I didn't tell her how old I
17 was, but she also told me at the time that she was 18.

18 THE COURT: But then you learned she was 15?

19 THE DEFENDANT: Yes, sir. Two or three months
12:47:04PM 20 later, yes, sir.

21 THE COURT: Before you had sexual intercourse with
22 her?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And then did you ask her to send nude
12:47:12PM 25 photographs of herself?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you send her nude photographs of
3 yourself?

4 THE DEFENDANT: No, sir, I don't think I ever did.

12:47:21PM 5 THE COURT: Okay. But you did ask her to send --

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you knew at least some of the time
8 that she was 15.

9 THE DEFENDANT: The second time I asked her -- I
12:47:28PM 10 asked her twice, and the second time I did know.

11 THE COURT: The second time she sent you the
12 pictures?

13 THE DEFENDANT: Yes, the second time I knew of her
14 age.

12:47:35PM 15 THE COURT: What were the pictures of her vagina or
16 buttocks?

17 THE DEFENDANT: Her whole body.

18 THE COURT: And you agree, at least from what you
19 said, that when you took her to Montana and engaged in sexual
12:47:52PM 20 intercourse with her, you knew she was 15; is that correct?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And during the ride from New York to
23 Montana in different states, did you engage in sexual
24 intercourse with her?

12:48:06PM 25 THE DEFENDANT: Only twice, your Honor.

1 THE COURT: Twice.

2 THE DEFENDANT: Because I was actually under the
3 gun because my boss would --

4 THE COURT: Do you remember what states you had
12:48:13PM 5 intercourse with her?

6 THE DEFENDANT: I don't, your Honor.

7 THE COURT: But it was outside of New York;
8 correct?

9 THE DEFENDANT: Yes.

12:48:20PM 10 THE COURT: Now, I want to ask you something. So
11 you had a female friend of yours from Watertown call the 15
12 year old's mom to set up a --

13 THE DEFENDANT: No, I don't know where that came
14 from.

12:48:29PM 15 THE COURT: How did you end up taking her to
16 Watertown?

17 THE DEFENDANT: I went to her mom and dad's house,
18 and she was -- she had texted my cousin -- or my cousin's
19 daughter. Okay? And that's how that came about coming to
12:48:47PM 20 Watertown.

21 THE COURT: Okay. So she told her -- apparently,
22 she told her parents that she wanted to visit your cousin's
23 daughter and that you just said you would take her up there.

24 THE DEFENDANT: Yes, sir.

12:48:58PM 25 THE COURT: I have to ask you this because I ask

1 everybody. Mr. Burdick, you seem like a low key kind of guy.
2 You had to obviously know this was wrong; is that a fair
3 statement?

4 THE DEFENDANT: Yes, sir.

12:49:11PM 5 THE COURT: Explain to me then why would you do
6 something that, you know, kind of everyone knows is wrong.

7 THE DEFENDANT: I don't have any excuses, your
8 Honor. I truly loved these people, her mom, her dad --

9 THE COURT: So you met her mom and dad?

12:49:32PM 10 THE DEFENDANT: Yes, I've stayed in their home. I
11 spent the night in their home with them. Her mom and dad
12 signed the release, you know, medical release for her to be
13 with me in the truck. I had her two little brothers in the
14 truck with me on a trip to Pennsylvania.

12:49:56PM 15 THE COURT: They had no clue what was going on
16 between you two at the time?

17 THE DEFENDANT: Between me and Faith, no.

18 THE COURT: In any event, the Court finds based on
19 Mr. Burdick's acknowledgement of the allegations contained in
12:50:06PM 20 paragraph eight of the plea agreement in the statements to the
21 Court that a factual basis does exist for his plea of guilty.
22 The Court will accept that. Mr. Burdick, I am now going to
23 ask you how, in Mr. Smith's presence, do you plead to a
24 violation in Title 18 of the United States Code Section 423(a)
12:50:25PM 25 as set forth in one count of felony information transportation

1 of a minor in commerce with intent to engage in criminal
2 sexual activity. How do you now plead, guilty or not guilty?

3 THE DEFENDANT: Guilty, your Honor.

4 THE COURT: Do we have a date for sentencing?

12:50:43PM 5 THE CLERK: August 17th at 9:00.

6 THE COURT: Now, I just want to explain, in case
7 Mr. Smith hasn't, unfortunately, he is retiring. So someone
8 else from the Federal Public Defender's Office will handle
9 your sentence. They will be equally as -- it is difficult to
10 replace Mr. Smith, but they will be certainly qualified. Do
11 you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Thank you very much, Mr. Burdick.
14 Thank you very much.

12:51:01PM 15 MR. ROSSI: Your Honor, August 17th I will be
16 beginning a jury trial with jury selection with Judge Wolford.
17 Is it possible -- that will last about three weeks. It's
18 supposed to -- the plan now is that we will only be in session
19 during the morning until about 1:30 or 2:00. So during those
12:51:15PM 20 three weeks, I could be available in the afternoons.

21 THE COURT: We can do it at 2:00. What about the
22 16th? What is the 16th of August?

23 MR. ROSSI: That's a Wednesday, Judge. We are
24 starting on a Thursday for jury selection. But Wednesday, I
25 am free.

1 THE CLERK: I'm not sure where it will be, but I
2 will have to find a courtroom.

3 THE COURT: Find a courtroom for the 16th.

4 THE CLERK: Okay.

5 THE COURT: Thank you very much. Thank you, Kathy.
6 Thank you, Briana.

7 MR. ROSSI: Thank you, your Honor.

8 THE COURT: August 16th, 9:00.

9 (Whereupon, the proceeding concluded at 12:51 p.m.)

10 * * *

11

12 REPORTER CERTIFICATE

13 I, Briana L. Jeffords, do hereby certify that I did report
14 in stenotype machine shorthand the proceedings held in the
15 above-entitled matter.

16

17 Briana L. Jeffords
18 BRIANA L. JEFFORDS
19 Freelance Court Reporter and
Notary Public No. 01JE6325111
in and for Genesee County, New York

12:09:01PM 20

21

22

23

24

25